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*Counsel for Ultimate Opportunities, LLC*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

----- X:  
:  
In re: :  
:  
4921 12th Avenue LLC, : Chapter 11  
:  
Debtor. : Case No. 18-47256-reg  
:  
----- X

**NOTICE OF APPEAL**

**Part 1: Identify the appellant**

1. Name(s) of appellant(s):  
  
Ultimate Opportunities, LLC (“**Ultimate**”).
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:  
  
Other: Commercial tenant of the first floor premises of the property located at 4921 12th Avenue, Brooklyn, New York.

**Part 2: Identify the subject of this appeal**

1. Describe the judgments, orders, or decrees appealed from:  
  
A. The *Order Directing Vacatur of Commercial Premises* (Dkt. No. 128) (the “**Vacatur Order**”) (**Ex. A**), *inter alia* ordering that “all occupants of any portion

of the commercial space located at the Property,” including Ultimate, “shall vacate the Property” on or before September 20, 2020.<sup>1</sup>

Ultimate hereby appeals from the Vacatur Order, including based on the Bankruptcy Court’s lack of subject matter jurisdiction and lack of authority to enter a final order as to fact or law.

B. The *Order Denying Motion for Reconsideration* (Dkt. No. 148) (the “**Reconsideration Order**”) (**Ex. B**), *inter alia* ordering that “the date of September 20, 2020, set forth in the Vacatur Order’s text, be, and it hereby is, replaced by the date of October 20, 2020” and “in all other respects, that the Motion [as defined in the Reconsideration Order] be, and it hereby is, denied.”

Ultimate hereby appeals from the Reconsideration Order to the extent that the Court denied the Motion (as defined in the Reconsideration Order), including the Court’s failure to vacate the Vacatur Order in its entirety, the Court’s failure to grant any “adequate protection” for Ultimate, and all other ways in which the Court denied any of the relief requested in the Motion, on any and all grounds. Ultimate reserves its right to appeal from so much of the Reconsideration Order regarding “the applicability to this matter of Executive Orders issued by the Governor of the State of New York regarding ‘Temporary Suspension and Modification of Laws Relating to the Disaster Emergency,’ including Executive Orders 202.28, 202.48, 202.57, and 202.64.”

2. State the date on which the judgments, orders, or decrees were entered:

The Vacatur Order was entered on August 26, 2020.

The Reconsideration Order was entered on September 29, 2020.

### **Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

- |    |  |   |
|----|--|---|
| 1. | Ultimate Opportunities, LLC<br>(appellant) | To Be Determined.   |
| 2. | The Plan Administrator<br>(appellee)       | Mark A. Frankel, Esq.<br>Backenroth Frankel & Krinsky LLP<br>800 Third Avenue<br>11th Floor<br>New York, New York 10022 |

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<sup>1</sup> September 20, 2020 is a Sunday and pursuant to Rule 9006(a) of the Federal Rules of Bankruptcy Procedure, the date required for vacatur “continues to run” through Monday, September 21, 2020.

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3. Old Republic National Title  
Insurance Company  
(appellee)

David K. Fiveson, Esq.  
Butler Fitzgerald Fiveson & McCarthy, PC  
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Fax: 212-615-2215  
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#### **Part 4: Appeal to the District Court**

Ultimate hereby appeals to the U.S. District Court for the Eastern District of New York.

#### **Part 5: Sign below**

Dated: New York, New York  
October 13, 2020

By: /s/ Schuyler G. Carroll  
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*Counsel for Ultimate Opportunities, LLC*

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re

Chapter 11

4921 12th Avenue, LLC

Case no. 18-47256-CEC

Debtor.  
-----X

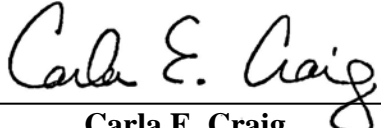
**ORDER GRANTING MOTION TO EVICT  
DIRECTING VACATUR OF COMMERCIAL PREMISES (CEC)**

Upon the motion of Mark Frankel as plan administrator (“Plan Administrator”) of the confirmed Chapter 11 plan (“Plan,” docket no. 51) for the entry of an order under sections 105, 1127 and 1142 of the Bankruptcy Code authorizing the Plan Administrator to remove the occupants of the commercial space at the Debtor’s property at 4921 12<sup>th</sup> Avenue, Brooklyn, New York (“Property”) based on the “Bidding and Auction Procedures” annexed to the Plan as Exhibit A and incorporated in the Plan by reference in paragraph 78 of the Plan, providing for the sale of the Property “free and clear of all liens, claims, commercial leases not assumed under the Plan, and encumbrances,” and upon the hearing held before this Court on January 22, 2020 and August 12, 2020 (CEC), and after due deliberation and sufficient cause shown therefore, it is

ORDERED, that all occupants of any portion of the commercial space at the Property, including without limitation Yehuda Salamon, Yidel’s Shopping Cart, Inc., Yidel’s Online Food Station, LLC., and Ultimate Opportunities, LLC., their employees, agents, members, managers, affiliates and assigns shall vacate the Property on or before August 31 September 20 (CEC), 2020.

**Dated: Brooklyn, New York  
August 26, 2020**



  
Carla E. Craig  
United States Bankruptcy Judge

# EXHIBIT B

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re

Chapter 11

4921 12th Avenue, LLC

Case No. 18-47256 (CEC)

Debtor.  
-----X

**ORDER DENYING MOTION FOR RECONSIDERATION**

Upon the motion, including Dkt. Nos. 131, 138, and 139 (collectively, “Motion”) of Ultimate Opportunities, LLC for reconsideration of the Order Directing Vacatur of Commercial Premises (Dkt. No. 128) (the “Vacatur Order”) and related relief, and upon the objections to the Motion, and upon the hearing held before this Court on September 21, 2020, and upon the entire record of this case, it is

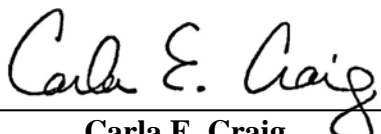
ORDERED, the date of September 20, 2020, set forth in the Vacatur Order’s text, be, and it hereby is, replaced by the date of October 20, 2020; and it is further

ORDERED, that the Court takes no position as to the applicability to this matter of Executive Orders issued by the Governor of the State of New York regarding “Temporary Suspension and Modification of Laws Relating to the Disaster Emergency,” including Executive Orders 202.28, 202.48, 202.57, and 202.64 (the “Covid Orders”), and this Order is without prejudice to (a) the Movant’s right to move or renew its Motion based upon the Covid Orders, **and no other reason (CEC)** and (b) the right of parties in interest to object thereto; and it is further

ORDERED, that in all other respects, that the Motion be, and it hereby is, denied.

**Dated: Brooklyn, New York  
September 29, 2020**



  
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**Carla E. Craig**  
**United States Bankruptcy Judge**